

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID W. BURTON,

Plaintiff,

v.

E.J. HALE, Detective, Kent Police
Department, *et al.*,

Defendants.

CASE NO. C06-654-MJP-JPD

ORDER DENYING PLAINTIFF'S
SECOND MOTION FOR APPOINTMENT
OF COUNSEL

This matter comes before the Court on plaintiff's second motion for appointment of counsel.¹
The Court, having reviewed plaintiff's motion, and the balance of the record, does hereby find and
ORDER as follows:

(1) Plaintiff's second motion for appointment of counsel (Dkt. No. 25) is DENIED. As
plaintiff was previously advised, there is no right to have counsel appointed in cases brought under
42 U.S.C. § 1983. Although the Court, under 28 U.S.C. § 1915(e)(1), can request counsel to

¹ This is technically plaintiff's third motion for appointment of counsel. However, plaintiff's
initial motion for appointment of counsel was stricken because plaintiff failed to serve that motion on
counsel for defendants.


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1 represent a party proceeding *in forma pauperis*, the Court may do so only in exceptional
2 circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*,
3 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of
4 exceptional circumstances requires an evaluation of both the likelihood of success on the merits and
5 the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues
6 involved. *Wilborn*, 789 F.2d at 1331.

7 Plaintiff has not demonstrated to this Court's satisfaction that he is likely to succeed on the
8 merits of his case or that he is unable to articulate his claims pro se. The fact that plaintiff resides in
9 another state and that defendants have retained counsel to represent them are not factors which, by
10 themselves, warrant appointment of counsel.

11 (2) The Clerk shall send copies of this Order to plaintiff, to counsel for defendants, and to
12 the Honorable Marsha J. Pechman.

13 DATED this 20th day of February, 2007.

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15 JAMES P. DONOHUE
16 United States Magistrate Judge
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25 ORDER DENYING PLAINTIFF'S
26 SECOND MOTION FOR APPOINTMENT
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